



NH Supreme Court vacated and remanded this decision on February 24, 1997, Slip Opinion No. 95-373.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TEAMSTERS LOCAL 633 OF
NEW HAMPSHIRE

Complainant

v.

CITY OF MANCHESTER

Respondent

CASE NO. M-0641:1

DECISION NO. 95-25

APPEARANCES

Representing Teamsters Local 633:

Gabriel Dumont, Esq.

Representing City of Manchester:

David Hodgen, Chief Negotiator

Also appearing:

Alfred Testa Jr., Manchester Airport
R. Bruce Gagnon, Teamsters Union

BACKGROUND

Teamsters Local 633 of New Hampshire (Union) filed unfair labor practice (ULP) charges against the City of Manchester, Aviation Department (City) on January 17, 1995 alleging violations of RSA 273-A:5 I (a), (e), (g), (h) and (i) relating to a breach of contract pertaining to the payment of step and longevity increases and the arbitrability of this issue. The City filed its answer and a motion for summary judgment on February 1, 1995 after which this case was heard by the PELRB on March 14, 1995.

FINDINGS OF FACT

1. The City of Manchester is a "public employer" of personnel employed by its Aviation

Department within the meaning of RSA 273-A:I X.

2. Teamsters Local 633 of New Hampshire is the duly certified bargaining agent for personnel employed by the City of Manchester at its Aviation Department.
3. The City and the Union are parties to a collective bargaining agreement (CBA) for the period May 1, 1992 through June 30, 1993. Under the provisions of Article XXXX of that contract, it automatically renewed itself "from year to year thereafter unless, prior to April 1, 1993, or any succeeding anniversary of such date, either party serves written notice on the other party that changes are desired therein or that it desires to terminate the agreement." In the event of such a termination, the CBA provides that "all of the provisions of the terminated agreement shall remain status quo." City Exhibit A. Notice such termination was given by the City to the union by letter of David Hodgen to Bruce Gagnon, President of Teamsters Local 633, dated March 30, 1993. City Exhibit B. A similar notice was provided by the Union to the City by letter dated March 29, 1993 from Bruce Gagnon to David Hodgen.
4. The CBA referenced in Finding No. 3 was the first contract covering employees in this particular bargaining unit. It was approved by the Board of Mayor and Aldermen, which serves as the "legislative body" for the City of Manchester, on July 7, 1992. It contained an "evergreen" clause or language at the time it was approved by the Board of Mayor and Aldermen. That contract also contained a wage scale at Article XI thereof. That scale consisted of an entry level and 4 successive merit steps at 12 months, 18 months, 30 months and 42 months. Thereafter, there were seven longevity steps at 5 years, 10 years, 16 years, 23 years, 26 years, 30 years and 34 years.
5. As the result of the termination notices exchanged between the parties on March 29 and 30, 1993, their contract ceased to exist as a year to year renewal on June 30, 1993. Thereafter the parties were obligated to maintain

the status quo pending negotiations for a successor agreement.

6. On June 7, 1994, Manchester's Board of Mayor and Alderman passed "A Resolution Abolishing Step/Longevity Increases for all City Employees in the Fiscal Year 1995 Budget."
7. The Union filed a grievance on July 13, 1994 claiming the CBA had been violated because the City failed to pay negotiated step and longevity increases contained in the contract. Funds to pay these increases were included in the Aviation Department's budget for the period ending June 30, 1995 and were approved by the Board of Mayor and Aldermen before they passed the resolution referenced in Finding No. 6.
8. By October 28, 1994, the parties had completed initial grievance processing procedures and the Union requested a meeting to select arbitrators and/or a dispute resolution agency. By November 18, 1994, Hodgen sent Gagnon a letter saying he would file unfair labor practice charges against the Union if it insisted on proceeding to arbitration based on a wrongful demand to arbitrate. The Union then filed the pending charges on January 17, 1995.

DECISION AND ORDER

The Union would have us find that the automatic, renewal or "evergreen" clause under Article XXXX of the contract is enforceable since, unlike Milton, 137 NH 240 (1993), it was a part of the CBA when that document was approved by the Board of Mayor and Aldermen. We disagree.

The act complained of in this case is the non-payment of step and longevity increases. This did not occur until the commencement of the 1995 fiscal year. The effectiveness of the step and longevity increments under the parties' contract ended on June 30, 1993 as the result of the joint exchange of termination notices in March of that year. Finding No. 3, above. After that date, the parties were bound to maintain the status quo until they successfully concluded negotiations for a successor agreement. At this point, the automatic renewal clause must be considered as a "cost item" as defined in Milton. 137 NH 240 at 243 (1993). Cost items must be approved by the legislative body of the public

employer. In this case, that is the Board of Mayor and Aldermen of the City of Manchester. By their adoption of resolution on June 7, 1994 (Finding No. 6, above), the Board of Mayor and Aldermen not only did not approve step and longevity increases for city employees in FY 1995, they also negated or unfunded any that would otherwise have taken effect. The ULP is DISMISSED.

So ordered.

Signed on the 16th of March, 1995.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Richard Roulx and E. Vincent Hall present and voting.